IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4204 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER
Versus
CHANDUJI BAKORJI

Appearance:
1. First Appeal No. 4204 of 1999
GOVERNMENT PLEADER for Petitioner No. 1-2
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

Admit. Learned Advocate Mr.A.J.Patel appears for the respondent and waives service of process of admission. At the request of the learned advocates, the first appeal is taken up for final hearing.

The lands acquired in the instant case are situated at village Adalaj, District : Gandhinagar. Under notification published under Sec. 4 of the Land Acquisition Act (hereinafter referred to as the Act) on 2.1.86, the proceedings commenced. The Land Acquisition officer, after following the procedure made an award declaring that the claimants are entitled to Rs.12/- per Sq.mtr. as the market price. On reference, the Reference Court awarded Rs.63/- per sq.mtr. by way of additional compensation and thus fixed the market price at the rate of Rs.75/per sq.mtr. by award dated 15.9.98. It is against this award present appeal is preferred by the State contending that the amount awarded is excess. The relevant record for the disposal of this appeal is submitted by the claimant.

The lands were acquired for the purpose of Ahmedabad-Gandhinagar road. On behalf of the State, the only contention raised is that the Reference Court has committed an error in fixing the price of the land and has seriously erred in relying on the earlier awards made by the Reference Court i.e. the copy of judgment of Second Jt. District Judge, Ahmedabad (Rural) in Land Acquisition Case no. 343/89 at exh. 16, the award bearing Land Acquisition Case No. 22/87 at exh. 20 and the copy of the judgment of 2nd Extra Assistant Judge, Ahmedabad (Rural) in Land Acquisition Case no. 2/83 at exh. 18. The lands situated at village Adalaj were acquired for Narmada Canal in L.A.R. No. 22/93 for which notification under Sec.4 of the Act was published on 21.12.87 wherein the Reference Court awarded Rs.85/per sq.mtr. for agricultural land and Rs.190/- per sq.mtr. for nonagricultural land. The award was confirmed by the Division Bench of this Court (Coram : M.R.Calla and D.H.Waghela, JJ) on 4.5.00 in F.A.No. 4497/99 with 7289 to 7299 of 1999. The lands of the same village were acquired under notification under Sec. 4 of the Act dated 1.8.91. On a reference being L.A.R.No. 1346/96, Reference Court awarded Rs.120/- per sq.mtr. for agricultural land and Rs.270/- per sq.mtr. for non-agricultural land. The said decision was confirmed by the Division Bench of this court (Coram : J.N.Bhatt and A.H.Mehta, JJ) on 17.7.01 in F.A. No. 1471/01 to 1492/01. In the year 1985 the lands situated at village Adalaj were acquired under notification under Sec. 4 of

the Act dated 13.12.1985 for which L.A.R.No. 358/91 was preferred and the Reference Court awarded Rs.69/- per sq.mtr. for agricultural lands. The Division Bench of this Court (Coram : J.N.Bhatt and A.H.Mehta, JJ) on 17.7.01 in F.A.No. 2035/01 to 2087/01 confirmed the award. Again there is an instance wherein the lands at village Adalaj were acquired by publication of notification under Sec. 4 of the Act on 13.12.85 and L.A.R.No. 213/91 came to be filed wherein the Reference Court awarded Rs.69/- per sq.mtr. for agricultural land. This bench confirmed the award on 27.8.01 in F.A.No.5193/00 to 5234/00. Mr.Patel appearing for the respondent gave another instance wherein the lands at village Adalaj were acquired by publication of notification under Sec. 4 of the Act on 20.1.88 for which L.A.R.No. 32/93 came to be filed and the Reference Court awarded Rs. 85/- per sq.mtr. for agricultural land. This Division Bench confirmed the said award on 27.8.01 in F.A.No. 5139/00 to 5161/00. In view of these judgments, the learned A.G.P. could not point out as to how different treatment is required to be given, more particularly, when there is specific evidence that the fertility of the land is same and therefore we dismiss this appeal with no order as to cost. It goes without saying that the claimant is entitled to all the statutory benefits including interest on solatium as held by the Apex Court SUNDER vs. UNION OF INDIA decided on 19/09/2001 by the Constitution Bench. The Apex Court in the said judgment pointed out as under:

"We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)

`Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and

authorise the grant of interest on solatium as well.'

In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the persons entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

Mr.Patel submitted that the lands were acquired in the year 1986 and adequate compensation has not been paid to the claimant. Therefore, direction to the State must be given to make the payment immediately. Considering the request made by Mr.Kodekar, learned A.G.P., we direct that 50% of the claim shall be disbursed within a period of 3 months after proper verification and remaining 50% within a period of 3 months thereafter in the same manner.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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